

§ 136.416

§ 136.416 When should the IHS deny employment or dismiss an employee?

The IHS must deny employment to an individual or dismiss an employee, when the duties and responsibilities of the position the individual person would hold or holds involve regular contact with or control over Indian children, and it has been adjudicated, pursuant to § 136.414 and § 136.415, that the individual has been found guilty of, or entered a plea of guilty or nolo contendere to, any felonious offense, or any of two or more misdemeanor offenses, under Federal, State or Tribal law involving a crime of violence; sexual assault, molestation, exploitation, contact, or prostitution; crimes against persons; or offenses committed against children. The IHS has the discretion to place such an individual in a position, if available, that does not involve regular contact with or control over Indian children, if a determination has been made that such placement would not put Indian children at risk and the individual would be able to perform the duties and responsibilities of this position.

§ 136.417 May the IHS hire individuals pending completion of a background investigation?

Pursuant to section 231 of the Crime Control Act of 1990, Pub. L. 101-647, 42 U.S.C. 13041, as amended by Pub. L. 102-190, the IHS may hire provisionally individuals as defined in these regulations, prior to the completion of a background investigation if, at all times prior to receipt of the background investigation during which children are in the care of the individual, the individual is within the sight and under the supervision of a staff person and a satisfactory background investigation has been completed on that staff person.

§ 136.418 What should the IHS do if an individual has been charged with an offense but the charge is pending or no disposition has been made by a court?

(a) The IHS may deny the applicant employment until the charge has been resolved.

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(b) The IHS may deny the employee any on-the-job contact with children until the charge is resolved.

(c) The IHS may detail or reassign the employee to other duties that do not involve regular contact with children.

(d) The IHS may place the employee on indefinite suspension, in accordance with statutory and regulatory requirements, until the court has disposed of the charge.

PART 136a—INDIAN HEALTH

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AUTHORITY: Sec. 3, 68 Stat. 674; 42 U.S.C. 2003, 42 Stat. 208, sec. 1, 68 Stat. 674; 25 U.S.C. 13, 42 U.S.C. 2001, unless otherwise noted.

SOURCE: 64 FR 58318, 58319, Oct. 28, 1999, unless otherwise noted. Redesignated at 67 FR 35342, May 17, 2002.

EFFECTIVE DATE NOTE: At 64 FR 58318, 58319, Oct. 28, 1999, as corrected at 65 FR 53914, Sept. 6, 2000, Subparts A–G of part 36 were redesignated as part 36a and suspended indefinitely, effective Oct. 28, 1999. At 67 FR 35342, May 17, 2002, part 36a was redesignated as part 136a and moved to subchapter M.

Subpart A—Purpose**§ 136a.1 Purpose of the regulations.**

These regulations establish general principles and program requirements for carrying out the Indian health program.

[46 FR 40692, Aug. 11, 1981. Redesignated at 52 FR 35048, Sept. 16, 1987]

§ 136a.2 Administrative instructions.

The Service periodically issues administrative instructions to its officers and employees which are primarily found in the Indian Health Service Manual and the Area Office and Program Office supplements. These instructions are operating procedures to assist officers and employees in carrying out their responsibilities, and are not regulations establishing program requirements which are binding upon members of the general public.

[46 FR 40692, Aug. 11, 1981. Redesignated at 52 FR 35048, Sept. 16, 1987]

Subpart B—What Services are Available and Who is Eligible to Receive Care?**§ 136a.10 Definitions.**

As used in this subpart:

Appropriate ordering official means, unless otherwise specified by contract with the health care facility or provider or by a contract with a tribe or tribal organization, the ordering official for the Service Unit in which the individual requesting contract health

services or on whose behalf the services are requested, resides.

Area Director means the Director of an Indian Health Service Area Office designated for purposes for administration of Indian Health Service Programs.

Contract health services means health services provided at the expense of the Indian Health Service from public or private medical or hospital facilities other than those of the Service or those funded by the Service.

Emergency means any medical condition for which immediate medical attention is necessary to prevent the death or serious impairment of the health of an individual.

Health Service Delivery Area means a geographic area designated pursuant to § 36.15 of this subpart.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Reservation means any Federally recognized Indian tribe's reservation, Pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), and Indian allotments if considered reservation land by the Bureau of Indian Affairs.

Reside means living in a locality with the intent to make it a fixed and a permanent home. The following persons will be deemed residents of the Health Service Delivery Area:

(1) Students who are temporarily absent from the Health Service Delivery Area during full time attendance at programs of vocational, technical, or academic education including normal school breaks;

(2) Persons who are temporarily absent from the Health Service Delivery Area for purposes of travel or employment (such as seasonal or migratory workers);